

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**LIBERTY SAVINGS BANK, FSB,
Plaintiff,**

v.

**MALCOLM S. SWOGGER,
LISA M. SWOGGER,
UNITED STATES OF AMERICA,
and UNKNOWN OWNERS AND
NONRECORD CLAIMANTS,
Defendants.**

No. 11 - CV - 00086 DRH

ORDER

HERNDON, Chief Judge:

Plaintiff has filed an amended Motion to Voluntarily Dismiss Pursuant to Fed. R. Civ. Pro. 41 (Doc. 7) its complaint against Defendants, stating that a cause of action no longer exists. Plaintiff therefore asks the Court to dismiss the action without prejudice. The Court observes that Defendants have not yet filed an answer or motion for summary judgment in this matter. **FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)** provides, “[t]he plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Because Defendants have not served an answer or motion for summary judgment, dismissal as of right pursuant to **RULE 41(a)(1)(A)(i)**

is proper.

The Court hereby **ACKNOWLEDGES** Plaintiff's Motion to Voluntarily Dismiss Pursuant to Fed. R. Civ. Pro. 41 (Doc. 7) and orders this case be **DISMISSED WITHOUT PREJUDICE**. The Clerk is directed to close the file.

IT IS SO ORDERED.

Signed this 18th day of February, 2011.

  David R. Herndon
2011.02.18
16:09:02 -06'00'

Chief Judge
United States District Court